

**APPROVED**

**TOWN OF THOMPSON  
ZONING BOARD OF APPEALS  
September 9, 2014**

**IN ATTENDANCE:** Chairperson James Carnell Richard Benson  
Pamela Zaitchick Robert Hoose  
Brian Soller, Alternate Kathleen Brawley, Secretary  
Paula Elaine Kay, Attorney  
Logan Ottino, Building Inspector

Absent: Richard McClernon and Jose DeJesus, Alternate

Chairman James Carnell called the meeting to order at 7:00 p.m. with the pledge to the Flag.

Chairman Carnell asked for a motion to accept July 27, 2014 meeting minutes. A motion to accept the minutes was made by Robert Hoose and seconded by Richard Benson  
4 in favor, 0 opposed

**CHRISTOPHER EDWARDS - 389 Lake Louise Marie Road - S/B/L: 55-1-1.3**

Chairman Carnell recused himself from this application as he previously inspected the same and appointed Richard Benson as Acting Chairman.

Acting Chairman Benson read the Public Notice.

Proof of mailing was provided to the secretary.

Mr. Edwards advised that he has two front yards because the property is on both Route 17 and Lake Louise Marie Road. Acting Chairman Benson noted for the record that the Lake Louise Marie Homeowner's Association approved this application, that the County of Sullivan issued its review under section 239M and referred it for local findings. The Department of Transportation also consented to this application. Attorney Paula Kay noted that there was a reference in the Department of Transportation's letter that the proposed project was not a problem so long as the applicant does not build in the State's right of way. However, the Board has a copy of the applicant's survey and it appears that the proposed construction is not in the State's right of way.

The Board members had no comment.

Public comment: Brian Long, a member of Lake Louise Marie Homeowner's Association and a neighbor to the subject premises, advised that he spoke with the President of Lake Louise

Marie Homeowner's Association and this application is approved. Mr. Long wanted to look at the survey and what is was proposed to be built, which Acting Chairman Benson showed Mr. Long the application and survey. After inspection. Mr. Long advised that it all looked good to him.

- (1) Can the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance? All voted No.
- (2) Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance? All voted No.
- (3) Is the requested area variance substantial? All voted No.
- (4) Will the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? All voted No.
- (5) Is the alleged difficulty self-created? All voted Yes.

Acting Chairman Benson requested that a motion be made to approve the variances as requested. A motion was made by Robert Hoose and seconded by Pamela Zaitchick 3 in favor; 0 opposed.

**YESHIVA MESIVTA ARUGATH HABOSEM - 203 Whittaker Road - S/B/L: 3-1-8**

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Chairman Carnell read the Public Notice.

Proof of mailing was provided to the secretary.

Chairman Carnell advised the applicant that it is the Board's understanding that a building permit was previously issued, site plan approval was obtained through the Planning Board and it was learned that three of the six units in question are smaller than what the Town's Zoning Law requires. Setbacks were all met and there are no other issues.

Public comment: Matthew Matthison (272 Whittaker Road) Mr. Matthison wanted to know how a mistake like this could be made. He indicated that he has no faith in the application process. Presumably there was an application and it was looked over. Attorney Paula Kay advised Mr. Matthison that the staff member who reviewed the building permit in question no longer works for the Town. Chairman Carnell added that the building has been built for some time.

Mr. Kohn advised the Board that he had everything inspected and thought we received a Certificate of Occupancy. We were waiting for the Certificate. Robert Hoose asked Mr. Kohn if people were living in the units? Mr. Kohn advised that people were living in the units this

past summer. Mr. Hoose advised that this is not right, you knew you needed a Certificate of Occupancy.

Mr. Matthison wanted to know why the Board could not go further into detail with respect to the issue of the prior employee. Does this normally happen? Chairman Carnell advised that in theory, we hope that it will not happen again. Robert Hoose commented that the applicant should have got a Certificate of Occupancy. Attorney Paula Kay advised that they tried to and that is how they found out there was an issue. Chairman Carnell advised that the Building Department did do an inspection and the building does comply with all Codes. Logan Ottino advised that there are some outstanding issues that need to be addressed by the applicant before a Certificate of Occupancy is issued.

Mr. Matthison wanted assurances that no one else will be able to do this in the future because it was permitted here. Attorney Paula Kay advised that this will not be permitted elsewhere if the variance is granted in this instance.

Robert Hoose commented again that it is not right that there was no Certificate of Occupancy and the applicant had the units occupied. Mr. Kohn apologized; he really thought a Certificate of Occupancy was issued. Attorney Paula Kay then explained what the process of obtaining a Certificate of Occupancy is to Mr. Kohn and that essentially, a Certificate of Occupancy must be issued by the Town before the premises is occupied. Attorney Paula Kay reminded the Board that we do have the new Town Law that allows you to fine the applicant.

Logan Ottino advised that the premises would not have passed an inspection for a Certificate of Occupancy because there are minor issues that need to be addressed.

Pamela Zaitchick questioned how the issues arose with the Certificate of Occupancy arose and Loga Ottino explained again that the issues were found when the Building Department attended at the premises to do a final inspection. Mr. Kohn noted that he needed to address some issues by the first Building Inspector and that he made the changes and the Building Inspector came back to ensure they were corrected.

Public comments: Eileen Schaefer (276 Whittaker Road) commented that three years ago a building permit was issued to the applicant, even though the proposed building did not meet the requirements. Ms. Schaefer then asked why the building has been occupied for three years and it is just now that it is learned that it does not have a Certificate of Occupancy. Attorney Paula Kay advised Ms. Schaefer that the applicant requested an inspection for a Certificate of Occupancy in September 2013 and that is when the Building Department found the issues. The premises was occupied for one year, possibly two, without a Certificate of Occupancy.

Ms. Schafer noted that there are several buildings on this property. Is everything else up to

Code? Chairman Carnell and Attorney Paula Kay both advised that this Board cannot answer that question. We are not the Building Inspector. The applicant has gone before the Planning Board and to our knowledge, the building complies with all Zoning laws and Town Code. This building, as far as everything else, other than the size of the smaller units, is in compliance.

Ms. Schaefer advised that these are bungalows that are rented. Mr. Kohn corrected Ms. Schaefer and advised that this is staff housing.

Ms. Schaefer advised that she lives up the road. There's a lot of noise. Attorney Paula Kay advised that any action this Board takes will not affect traffic or more people. In the future, if the applicant wants to add dwellings or units, it would have to go to the Planning Board and there would be a public hearing where you could address these issues. Ms. Schaefer asked if she will we be notified and Attorney Paula Kay advised she would.

Logan Ottino confirmed that the site plan was approved in 2011. Chairman Carnell advised that there would be a public hearing in 2011.

Robert Hoose asked Logan Ottino when the buildings were up and running and Ms. Ottino advised that framing, plumbing and insulation was completed in 2012.

Mr. Matthison asked who is responsible for notifying the neighbors of the public hearing? Attorney Paula Kay advised that this Board and applicant. Mr. Matthison then asked who is responsible if it wasn't done? I didn't receive notice before. Pamela Zaitchick advised that you can submit a FOIL request to see who was notified. Attorney Paula Kay noted that we do not know if there was a public hearing. We would have to check the file. Mr. Matthison noted that there is a lot of building going on at the premises. Mr. Kohn advised that he always gets building permits. Attorney Paula Kay advised Mr. Matthison that he can submit a FOIL request to review the approvals given for the premises. Mr. Kohn advised that he never had to mail any notices prior to this application.

The Board members had no further comment.

- (1) Can the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance? All voted No.
- (2) Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance? All voted No.
- (3) Is the requested area variance substantial? All voted No.
- (4) Will the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? All voted No.
- (5) Is the alleged difficulty self-created? All voted Yes.

A negative declaration motion was made by Richard Benson and seconded by Robert Hoose  
4 in favor; 0 opposed.

Robert Hoose discussion making a motion to approve the variances as requested with the condition that the applicant be fined for the three units occupied without a Certificate of Occupancy at \$250.00 per unit. Logan Ottino reminded Mr. Hoose that Town Law provides for \$1,000.00 per unit. Attorney Paula Kay suggested that the Board also have some time line in place for this. The applicant has a list from the Building Department that needs to be completed before next summer. Variances are only good for six months. Mr. Kohn confirmed that he has addressed what the Building Department recently asked for. Chairman Carnell advised the applicant that he must get a Certificate of Occupancy before March 9, 2015.

Attorney Paula Kay advised the applicant that he will need another inspection to ensure that all issues have been addressed.

Mr. Kohn asked for a smaller fine. He advised that they use public funds to build these units. I have never had this issue before. I thought there was temporary Certificate of Occupancy and I didn't get notice of my mistake. Logan Ottino advised the applicant that he was given notice in September 2013. Mr. Kohn once again asked the Board to reduce the fine. Attorney Paula Kay advised that this Board does not have discretion to change the amount fine.


Chairman Carnell requested that a motion be made to approve the variance subject to payment of a \$3,000.00 fine and a motion was made by Robert Hoose and seconded by Pamela Zaitchick.

4 in favor; 0 opposed.

A motion to end the meeting at 7:25 p.m. was made by Richard Benson and seconded by Robert Hoose.

4 in favor; 0 opposed.

Respectfully submitted,

  
Kathleen Brawley, Secretary  
Town of Thompson Zoning Board of Appeals